

TEACHERS' RETIREMENT BOARD

INVESTMENT COMMITTEE

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SUBJECT: Quarterly Litigation Report

ITEM NUMBER: 15

ATTACHMENT(S): 1

ACTION: X

DATE OF MEETING: January 5, 2000

INFORMATION: \_\_\_\_\_

PRESENTER(S): Mr. Waddell

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The Quarterly Litigation Report has been prepared as directed by the Investment Committee. Non-Investment litigation will be reported in the Retirement Board meeting.

**STRS QUARTERLY LITIGATION REPORT**  
**January 2000**

**PROPERTY ADVISOR: CB Richard Ellis**  
**Wilshire Landmark I**

**Wang v. STRS (1994)** STRS Counsel: Haight, Brown, & Bonesteel. Legal counsel retained by insurance company. Alleged elevator injury at property. Attorneys of insurance company have responded to complaint and proceeding with preparation for trial.

**Northrop Gruman Plaza**

**Sanders v. STRS, et al. (1994)** STRS Counsel: Haight, Brown and Bonesteel. Alleged injury as a result of elevator malfunction. Insurance Company has retained counsel on behalf of STRS. Response to complaint has been filed. Plaintiff's deposition taken March 2, 1995. Millar Elevator (cross-defendant) has filed a governmental claim against STRS with the Board of Control. Upon rejection Millar Elevator will file a cross-complaint against STRS. Court has ordered mediation set before April 1996. Millar Elevator has accepted STRS tender of defense and agreed to indemnify STRS. Trial presently set in Santa Monica Superior Court.

**Chudnousky v. STRS (1995)** STRS Counsel: Wilner, Klein & Siegal. Insurance carrier retained counsel on behalf of STRS. Plaintiff alleges she fell over a brick in plaza and broke her hip. Claim being processed through insurance carrier. Lawsuit was filed and served on STRS in January 1997. Court has requested parties enter into mediation, which is scheduled for October 8, 1997. Plaintiff has offered to settle case for \$75,000. The mediation hearing resulted in a \$20,000 settlement offer to plaintiff to settle case. Property manager for STRS has been deposed and discovery is ongoing.

**STRS v. Northrop Gruman (1998)** STRS Counsel: None assigned at this date: Claim made by advisor to tenant for common billing for electricity. Tenant and advisor are working on resolution of issue without litigation and claim by Landlord may be offset by outstanding credits accumulated by tenant. **Dispute has been resolved via stipulated agreement. Case closed.**

**STRS v. Mercantile National Bank (1998)** STRS Counsel: Cox, Castle & Nicholson. Claim made by landlord to tenant for deferred

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billing of electricity which tenant has disputed. **Dispute has been settled via adjustment to lease payments. Case closed**

**Rancho Pacifica**

**STRS v. Nittok Tile (1997)** STRS Counsel: Cox, Castle & Nicholson. Tenant has abandoned space and filed bankruptcy. STRS has filed a claim with the bankruptcy trustee through its counsel. Advisor will monitor bankruptcy claim. STRS has received \$7,100.00 under bankruptcy claim to date.

**STRS v. Specialized Testing (1998)** STRS Counsel: Cox, Castle & Nicholson. Tenant was under an agreement as a result of a prior default, which included a stipulated judgment. Tenant has again defaulted and the stipulated judgment enforced removing tenant from possession of the premises. Landlord has obtained possession of the premises. Action has been initiated to collect from the guarantors under the lease, **however, possibility of collecting judgment is poor and advisor has recommended STRS write-off balance owed. Case closed.**

**\*STRS v. Advanced Medical Research (1991)** STRS Counsel: Cox, Castle & Nicholson. Breach of Lease with tenant via non-payment of rent. Tenant's security deposit has been forfeited and guarantor of lease has paid remainder of arrearage.

**STRS v. Waldron & Co. (1997)** STRS Counsel: Cox, Castle & Nicholson. Tenant was sued by the Securities and Exchange Commission in September 1998 and ceased to occupying the property. STRS has retained possession of the property and applied the security deposit to arrearage. Advisor will assess availability of tenant's assets to determine if STRS should pursue judgement. Tenants space has been re-leased mitigating the damages.

**STRS v. Virtual Stock (1999)** STRS Counsel: Cox, Castle & Nicholson. Tenant has breached lease via non-payment and vacated property. Lease expires March 1999. Advisor will assess assets of tenant to determine if STRS should pursue litigation.

**9720 Wilshire**

**STRS v. Inman, Weisz & Stein. (1998)** STRS Counsel: Cox, Castle & Nicholson. Tenant has vacated space and is presently in default

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on rent due and owing under their lease. Advisor will seek judgment and pursue collection against tenant.

**Atlanta Industrial**

**\*STRS v. Never Late Air Freight (1999)** STRS Counsel: Cofer, Beauchamp. Tenant has defaulted on lease payment. Unlawful Detainer action filed, writ of possession and judgement has been obtained. Advisor is marketing space to mitigate losses prior to further legal action.

**PROPERTY ADVISOR: Lend Lease**

**Anaheim Plaza Shopping Center**

**In Re Clothestime (1995)** STRS Counsel: Cox, Castle & Nicholson. Tenant filed bankruptcy on December 9, 1995 but continues to make payment to STRS and occupy space.

**STRS v. El Pollo Loco (1999)** STRS Counsel: Cox, Castle & Nicholson. Negotiation to enter into lease with tenant terminated when they refused in bad faith to sign corporate lease. Attempts will be made to seek reimbursement of costs and legal fees prior to litigation.

**STRS v. Baskin Robbins (1997)** STRS Counsel: Cox, Castle & Nicholson. Tenant has defaulted under lease via non-payment of rent. Unlawful Detainer action was commenced against tenant, **Landlord has regained possession and monetary judgement which advisor will attempt to enforce against tenant.**

**Ruiz v. STRS (1999)** STRS Counsel: Cuff, Robinson and Jones. Personal injury action filed by plaintiff alleging abduction from parking lot, assault and rape. Matter has been sent to insurance carrier who has retained counsel on behalf of STRS to defend action.

**STRS v. Kenny Rogers Roasters (1997)** STRS Counsel: Cox, Castle & Nicholson. Tenant is in default of Lease for non-payment of CAM charges and rent. Legal action has been initiated to regain possession of the premises and will seek monetary judgment against franchisee and guarantor Roasters Corporation. Tenant has filed for Bankruptcy protection and a proof of claim has been filed on behalf of STRS in the bankruptcy case. **Tenant objected**

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to STRS claim for future lost rent. STRS counsel has reached settlement on claim which has been approved for payment by court.

**Pacific Financial Plaza**

**STRS v. Cal Fed (1999)** STRS Counsel: Voss, Cook & Theil. Litigation involves a master lease with tenant Cal-Fed who has claimed that lease was terminated due to actions of landlord. Space had been sub-leased by Cal-Fed to two (2) sub-tenants without the permission of the landlord as required by the terms of the lease. Sub-tenants continue to pay rent into an escrow account while litigation is ongoing. STRS will seek declaratory relief judgment against Cal-Fed for determination of validity of lease and monetary judgement for damages suffered by STRS. Cal-Fed has cross-complained against sub-tenants and STRS which have been responded to by STRS counsel. Depositions of STRS real estate advisors have been postponed pending Cal-Fed's attempt to settle with sub-tenants. **Trial is presently set for March 6, 2000 with a settlement conference scheduled for February 4, 2000.**

**STRS v. Mid Atlantic Bagel (1999)** STRS Counsel: Rudnick & Wolfe. Tenant has breached lease via non-payment, vacated premises and its parent company - Manhattan Bagel Company - has filed for protection from creditors in Bankruptcy Court. STRS counsel has filed a claim with the Bankruptcy Court for \$133,613.24 against Manhattan Bagel Company as guarantor of the lease and is attempting to negotiate with Mid Atlantic Bagel for a Termination Agreement to regain legal possession of the space.

**STRS v. Chung Sun Choi dba Plain N' Fancy Donuts (1999)** STRS Counsel: Rudnick & Wolfe. Tenant has breached lease via non-payment. Negotiations have resulted in a payment plan which tenant is making payments according to its terms.

**Joe Pacific Shoe Repairs v. STRS, et al. (1997)** STRS Counsel: to be determined - appointed by insurance company. Plaintiff alleges breach of lease commitment by property manager of STRS. STRS will be indemnified for all costs and judgments by insurance carrier of leasing agent. Case has been scheduled for trial and depositions and discovery continuing in preparation for trial. Case is being monitored by STRS counsel: Bendet, Fidell et al. with fees paid Case by the insurance carrier.

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**1120 19<sup>th</sup> Street**

**In Re Thomas Enterprises. Inc. (1992)** STRS Counsel: Hazel & Thomas, P.C. Tenant bankruptcy. Relief sought: \$70,000. Chapter 11, issue over 4 parking spaces which tenant gave up with lease for Suite 700. Creditors objected to Disclosure statement. **Disclosure statement revised and approved, plan has been approved by Creditors and Court. Case closed.**

**STRS v. Communication Images (1999)** STRS counsel: Rudnick and Wolfe. Tenant has breached lease via non-payment of rent and has vacated property. Counsel is attempting to resolve matter without litigation.

**University Office Park**

**Washington v. STRS (1999)** STRS Counsel: Law Office of Daniel Hirshik. Plaintiff claims a slip and fall injury in the parking lot. Matter has been sent to law firm retained by the insurance carrier (Royal Insurance) for representation in defense of STRS. Cross-complaints have been filed against management company and security company on behalf of STRS. **Arbitration set for November 1999 was dropped when plaintiff retained new counsel Discovery is in progress.**

**Southrail Business Park**

**STRS v. Song Dba Woo-Ri (1997)** STRS Counsel: Procopio, Cory, Hargraves & Sabitch. Tenant has defaulted under Lease via nonpayment of rent. Tenant has vacated space and filed for Bankruptcy. Collection of arrearage unlikely but advisor will file claim on behalf of STRS in Bankruptcy proceeding.

**STRS v. Dundee (1998)** STRS Counsel: Procopio, Cory, Hargraves & Sabitch. Tenant has defaulted under lease. Judgment obtained for money and possession. Possession of space has been regained by STRS. Advisor will attempt to collect money judgment from tenant.

**Pacific North West Group B-B-1**

**Elbe v. STRS (1994)** STRS Counsel: Delaney, Zemetis, Donahue & Durham (appointed by insurance company) Alleged slip and fall by

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an employee of tenant. The complaint was served in July, 1996. STRS Counsel has filed answer and cross-complaint against a cleaning company. Discovery is proceeding with deposition of plaintiff completed. Counsel has reviewed deposition as favorable to STRS, matter proceeding to trial. **Trial date has been rescheduled for early 2000, STRS Counsel anticipates filing Summary Judgement motion to resolve case.**

**Santa Clara Industrial**

**Lopez v. STRS, et al. (1993)** STRS Counsel: Jones, LaMore, Brazier and Riddle (retained and paid by insurance company). Personal injury action for alleged slip and fall due to leak on roof. Matter being handled by insurance carrier.

**Quarry Shopping Center**

**STRS v. Partyland (1997)** STRS Counsel: Schenk, Annes, Brookmen & Tepper. Tenant has requested early termination of lease which landlord has denied (lease language does not allow an early termination). Attorneys are negotiating settlement to avoid litigation.

**Non-Real Estate Investment Related Litigation**

**Integra Realty Resources, etc. and et al. v. Fidelity Capital Appreciation Fund, et al.**

U.S. Bankruptcy Court of Colorado  
Plaintiffs' Counsel:

STRS Counsel: Irene Tamura, Deputy Attorney General

This is a class action, of which STRS is a likely member, filed against several hundred shareholders of Integra, a company now in Bankruptcy. STRS owned shares of Integra through its Extended Market Fund. Through a series of complex mergers, buyouts culminating on January 3, 1989, in a spinoff by Integra of the stock it owned in a subsidiary, STRS became the owner of 13,649 shares of ShowBiz Pizza with an assigned value of \$156,000. (The original cost of the Integra shares which were replaced by the ShowBiz shares was \$267,000. Thus, STRS suffered a paper loss of approximately \$111,000.) This action, brought by the trustee for several creditors of Integra, maintains that the spinoff was a conveyance in fraud of the creditors. The payer is to reverse the transaction or to reimburse Integra for the value of the

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fraudulently conveyed asset together with attorneys' fees. As a result of a motion brought by a majority shareholder, the Bankruptcy Court has appointed counsel for Fidelity Capital Appreciation Fund who shall provide a defense on behalf of the class of defendant's. There is presently before the court a settlement offer which will be voted on by the class of defendants of which STRS is a member and subject to court approval. **Without disrupting the pending settlement on file with the Court, recent cases have raised a possible defense of Sovereign Immunity which will be pursued by counsel for CalSTRS.**

**CalMicro Devices Litigation (1995)** STRS Counsel: Hogan & Hartson by Joseph Hassett. The federal trial court accepted the settlement proposed by the parties, which resulted in a partial recovery of damages and the savings of many millions of dollars in attorneys' fees. The former CEO of the company has been convicted of securities fraud and was ordered on December 8, 1998 to make partial restitution to the class by the conveyance of company stock valued at approximately \$3.75 million and by the assignment to the class of the \$2 million in proceeds of officers and directors insurance. This order is subject to appeal. , 1999. In addition, the CEO is subject to personal liability in the original class action. Judge Walker heard arguments on our motion for Summary Judgement against the CEO on Thursday, June 3. Thereafter, CalSTRS and ColPERA entered into a tentative settlement agreement with the former CEO (Chan Dessaigondar) pursuant to which Mr. Dessaigondar would convey to all of the class all of the shares under his control. A token number of these shares (3.293% of the total) will be held back and returned to him if he is exonerated in the criminal case. It is anticipated that this agreement will be finalized and sent to Judge Walker for his approval in October 1999.

**NASDAQ Litigation (1997)** STRS Counsel: Office of the Attorney General. This is a federal class action lawsuit originally filed in 1995. The case as currently filed alleges that the NASDAQ market makers—large brokerage houses—conspired to maintain an overly wide "spread" in the transaction costs associated with the trading of shares of stocks on the NASDAQ market. The spread in the transaction costs were limited to half points rather than quarter points, a practice that resulted in higher costs. The practice has been referred to as a form of price rigging and occurred from May 1989 to May 1994.

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On November 9, 1998, a class-action settlement of \$1.03 billion was approved by the Federal district court. As a member of the class, STRS will receive a portion of the proceeds from the settlement. **CalSTRS settlement claim was filed on December 8, 1999, and the system will receive between \$1-million & \$3-million from the settlement. CalSTRS should receive the funds by the end of the year 2000.**

**\*EBS V. Barclays Global Investors, N.A. et al (1999)** STRS Counsel: To be determined (class action) A class action has been filed in the United States District Court for the District of Delaware of which CalSTRS has been noticed as a possible defendant in this action. Plaintiff, EBS Litigation L.L.C. has brought action against all persons or entities who received at least 55 shares of the June 30, 1995 transfer of shares of Dave and Busters, Inc. as a result of a spin-off from Edison Brothers Stores, Inc. Plaintiff's allege that at the time of the spin-off, Edison Brothers Stores, Inc. was not legally authorized to give stock and that the stock was given without adequate consideration by defendants. Legal staff will monitor case.

**Note:    \* indicates new litigation cases added to Quarterly Report.**